IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1781 of 1985

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PALABHAI JETHABHAI - Appellant(s)
Versus
MAGANBHAI BABABHAI CHAUHAN & 2 - Defendant(s)

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Appearance :
MR SHIRISH JOSHI for Appellant(s) : 1,
MR RL MEHTA for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/08/2006

ORAL JUDGMENT

Present appeal has been filed by the appellant - original plaintiff (hereinafter referred to as the plaintiff) challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad passed in Civil Suit No.583 of 1980 in dismissing the said suit.

2. The plaintiff filed the aforesaid civil suit in the learned City

Civil Court at Ahmedabad for a declaration that he has become the member of defendant No.3 society or that he has become entitle to become the member of the said society and for a direction on the defendant society to allot block No.22 to the plaintiff. It was averred in the plaint that defendant No.1 is a chairman of one Himmatnagar Cooperative Housing Society and that defendant No.2 is the Secretary. That the said society has 24 members and their residential houses were under construction. It was further averred that for becoming a member of the society, one has to purchase a share of Rs.50/- and for their purpose, a person is required to deposit a sum of Rs.50/- in the society. Over and above the said amount, certain amount were to be paid by way of contribution towards the construction work. It was further averred that a member of the society can resign by making an application and when any such member resigns, a new member is enrolled. It was contended that a deposit of Rs.500/- was being accepted by the society from such person, who were desirous of becoming members of the society in the event of vacancy and such persons who had paid deposit of Rs.500/- were to be given membership as per their turn. It was further averred that the names of such prospective members were arranged in a list on the basis of the dates of their deposits and such depositors were assured that they would automatically become members in the event of vacancies arising in the said society and would be allotted the blocks falling vacant. It

was further contended that the defendant No.2 who was managing the affairs of the society were told by the plaintiff that he intended to be enrolled as a prospective member. It was further submitted that on 13-5-1963 relying on the assurances given by the defendants, the plaintiff deposited a sum of Rs.500/- under a receipt given by the society and his name was placed at serial No.2 in the annual report. It was submitted that one Champaben had also deposited the amount and her name was first in the list, but thereafter, she took back her deposit as she dropped her idea to remain as a prospective member and therefore, the plaintiff became entitled to be treated as first in the list of prospective members. It was further averred that certain amounts were deposited by him. It was further averred that on assurance that he would be taken up as a member, a sum of Rs.2750/- was taken by way of deposits by the defendants from the plaintiff. It was further averred that one Varubhai Jivabhai had resigned from the membership in 1963 but the plaintiff was not taken up as a member and that block was illegally given to one Dhulabhai Manabhai, who was the brother-in-law of the defendant No.1 Maganbhai. It was further contended that one Bababhai Somabhai had thereafter submitted a resignation to the society which was placed before the Managing Committee on 29-8-2005 and he was permitted to resign and that is how his vacancy had arisen. It was contended that the plaintiff became entitled to get the block of Bababhai but instead of allotting that

block to the plaintiff, the defendants illegally gave that block to Shivabhai Tejabhai, who was at serial No.5 in the list and took a sum of Rs.3000/-from him on 10-9-1965 and passed a resolution to enroll him as a member. It was submitted that as the block was illegally transferred/allotted to Shivabhai Tejabhai instead of plaintiff and therefore, he filed a suit before the Registrar's Nominee on 3-11-1965 which was dismissed on the ground that the block of Bababhai Somabhai had not fallen vacant. It is then stated that the plaintiff filed an appeal before the Cooperative Tribunal and the defendant society also filed an appeal against the said decision and it was declared that the plaintiff was entitled to become a member and a direction was issued to hand over the possession of block No.22 to the plaintiff. Thereafter, execution application was filed for implementing the order of Tribunal and it was held by the civil Court that the order of Tribunal was without jurisdiction and therefore, it was not executable. Therefore, the plaintiff filed Civil Suit No.2231 of 1974 which was dismissed on the ground that it was filed without giving requisite statutory notice and thereafter after the statutory notice , the plaintiff filed the aforesaid suit for the aforesaid relief. Suit was resisted by the defendants by filing written statement at Exh-10. It was submitted that the suit was barred by limitation. It was also further submitted that on 23-6-1974, the suit block was transferred to the name of Shivabhai Tejabhai Parmar to the knowledge of the plaintiff. It was further contended that since

Shivabhai was in possession of the suit block, he was a necessary party and therefore, the suit is bad for non-joinder of a necessary party. It was denied that the plaintiff had approached defendant Nos.1 and 2 and shown desire to become a member of the society. It was further denied that the plaintiff had deposited Rs.500/- for becoming the member of the society. It was also denied that the amount was deposited by the plaintiff for share capital. It was further submitted that only the name of the depositors were mentioned in the annual report. It was further denied that the plaintiff was given any assurance that he would be taken up as a member. He has also denied that the plaintiff had deposited Rs.150/- without getting a receipt. It was also denied that he had Bababhai Somabhai had resigned or that the resignation was accepted in the meeting dated 29-8-1965. It was stated that non such meeting of the Managing Committee was convened on that day. It was contended that Bababhai Somabhai had given an application dated 4-5-1966 for transferring the membership to Shivabhai Tejabhai and transferring the share of the society to his name. It was further contended that there is no vacant block with the society which can be allotted to the plaintiff. It was further stated that a direction to the society to accept the plaintiff as a member cannot be issued. The trial Court raised the issue at Exh-42. The plaintiff was examined at Exh-101. On the plaintiff side, Bababhai Somabhai and one Chehrabhai alias Chimanbhai Bababhai were examined at Exh-

113 and 115 respectively. The secretary of the society was examined at Exh-118 and one Dhirajbhai Shivrajbhai who is the son of Shivabhai Tejabhai to whom the suit block is said to have been transferred had deposed at Exh-126. Documentary evidences were produced. On appreciation of documentary as well as oral evidences, the learned trial Court dismissed the suit by holding that the plaintiff has failed to prove that he was entitled to become a member of the defendant society or to be treated as such that he is entitled to the allotment of the suit block. The learned trial Court also held that there was no resignation of Bababhai Somabhai which was alleged to have been accepted in the meeting alleged to have been convened on 29-8-2005. The learned trial Court also on appreciation of evidence held that in fact block No.22 was transferred in favour of Shivabhai by Bababhai on the basis of the application submitted by Bababhai in the year 1966 and that the evidence of Bababhai is not reliable and he has tried to support the plaintiff though he himself has transferred the block No.22 in favour of Shivabhai. The learned trial Court also held that suit was required to be dismissed for non-joinder of proper parties, as though the prayer for possession of block No.22 was sought, Shivabhai who was found to be in possession of block No.22, was not joined. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court in dismissing the aforesaid suit, the appellant – original plaintiff has preferred the present appeal.

3. Shri Baiju Joshi, learned advocate appearing on behalf of the appellant has submitted that the learned trial Court has materially erred in holding that the suit is bad for want of necessary party. He has also further submitted that the learned trial Court has erred in holding that the appellant was not entitled to become a member of society and to be treated as such and also to the allotment of the suit block. It is also further submitted that the learned trial Court ought to have appreciated that in the case of every society, it is the society who has to admit member and/or to accept the resignation of the out going member and the members themselves have no right to transfer the properties without their being any admission of the incoming member by the society. It is further submitted that basically the claim of the appellant against the society was for a block and incidentally the claim was put forward against block No.22 since in that case only the member had resigned, but it does not mean that the person who has accepted that particular block would be a necessary party.

4. I have gone through the entire record and proceedings and has considered the oral as well as documentary evidence. The learned trial Court held that suit is not barred by limitation, that the suit was presented on proper Court fees and that the suit is not bad for want of a valid notice under Section 167 of the Gujarat

Cooperative Societies Act, 1961.

5. It is the case on behalf of the plaintiff that he has entitled to become member of the society and to get block No.22 , which formerly belonged to one Bababhai, who has resigned as a member of the society. On the other hand, it is the case of the defendants that there was no resignation of Bababhai and/or any vacancy had arisen because of resignation of Bababhai and that the suit block was transferred by Bababhai to Shivabhai Tejabhai. It has come on evidence of the plaintiff that he became the member of the society about 30 years back and that in the year 1959, he had resigned from the membership of the defendant society. However, it is his case that about 6 or 7 years after his resignation, he had deposited a sum of Rs.500/- in the society and he had deposited total sum of Rs.2750/- with the defendant society. It is required to be noted that though it was averred in the plaint that a resolution was made by the society to take Shivabhai Tejabhai as its member and a further sum of Rs.3000/- was taken from him on 10th May, 1965. In para 3 of the deposition, he has stated that block of Bababhai which had falled vacant was not given to anyone by the defendant society and that the defendant society has taken up a wrong contention that it was given to Shivabhai Tejabhai. As rightly held by the learned trial Court, the plaintiff has changed his version at the time of deposition as it was found that Shivabhai Tejabhai was not impleaded as a

party to the suit. In cross-examination, the plaintiff has also admitted that he was not given any writing to show that he was to be taken up as a member while accepting his deposit. He has also admitted that he had not visited the site of the defendant society about 14 to 17 years. Nothing has come out on record that there was a rule bye-law or any circular or a resolution of the society by which a person, who has deposited an amount with the society would become entitle to membership in the event of any vacancy. On going through the audit report, which is relied upon by the plaintiff, there is no indication in the said report that the persons from whom deposits were taken were to become the members of the society automatically or were accepted to become the members in any vacancy arising due to the resignation of any of the existing members of the society. It was the contention on behalf of the plaintiff that Bababhai, allottee of block No.22, had resigned and that his resignation was accepted in the meeting dated 29-8-1965. However, on evidence, it has come on record that there was no such meeting convened on 29-8-1965 as alleged. On the contrary, on going through the evidence, it appears that in fact, Bababhai transferred block No.22 in favour of Shivabhai and very Bababhai submitted an application for transferring his share certificate in favour of Shivabhai and the application/writing at Exh-120 was not only singed by said Bababhai but it was singed by one Jivan Mohan and Babuba also and said Babuba is the wife of Bababhai. It has also

come on record that application was submitted by Bababhai for transferring share certificate on 4-5-1966 and a receipt dated 4-5-1966 singed by Bababhai has also come on record. Thus, on considering the documentary evidence, block No.22 had not fallen vacant on resignation by Bababhai in the year 1965 and in fact block No.22 was transferred in favour of Shivabhai by Bababhai in the year 1966. Thus, the story on the part of the appellant that block No.22 had fallen vacant is not borne out from the record. The learned trial Court has also further rightly held that as the appellant has prayed for possession of block No.22 which was found to be in possession of Shivabhai Tejabhai and still he is not joined as a party to the suit and therefore, also the learned trial Court has rightly dismissed the suit for non joinder of proper party. Considering the facts and circumstances and the evidence on record, no error has been committed by the learned trial Court in dismissing the suit. This Court is in complete agreement with the reasonings and findings given by the learned trial Court while dismissing the suits.

6. For the reasons as stated above, the appeal fails and the same is dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

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